

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 3/12/2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHENG XIA WANG, CHUNLIN ZHANG, JUN QUING :
ZHAO, BAO GUO ZHANG, ZE JUN ZHANG, GUOYI :
WANG, TONG WEI WU, and ZHI QIANG LU, :

Plaintiffs, :

-against- :

SHUN LEE PALACE RESTAURANT, INC., T & W :
RESTAURANT, INC., JOHN HWANG, MICHAEL :
TONG, BIN HU, and WILLIAM HWANG, :

Defendants. :

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VERNON S. BRODERICK, United States District Judge:

In the instant action brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and New York Labor Law (“NYLL”), Defendants have requested leave to file five additional declarations—a total of ten declarations—in support of their opposition to Plaintiffs’ motion for conditional certification of a collective action pursuant to 29 U.S.C. § 216(b). (*See* Doc. 62.) On March 2, 2018, Defendants provided further explanation as to why they require additional declarations, (Doc. 66), and on March 8, 2018, Plaintiffs filed an opposition to Defendants’ request, (Doc. 69).

After considering the request, I DENY Defendants’ request to file additional declarations and limit both parties to five declarations. At this preliminary stage, the burden is on the plaintiff to make a showing that the proposed members of the collective are “similarly situated.” *See Bittencourt v. Ferrara Bakery & Café Inc.*, 310 F.R.D. 106, 111 (S.D.N.Y. 2015) (“[C]ourts have determined that the applicable test is whether the plaintiffs have established a sufficient ‘factual nexus’ between their claims and the potential claims of other putative collective action members.”).

17-CV-840 (VSB)


ORDER

Because conditional certification takes place early in the litigation, and requires a showing by plaintiffs that they “together were victims of a common policy or plan that violated the law,” *id.* (quoting *Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010)), I limit Defendants to five declarations. If necessary, Defendants will have the opportunity at the second stage of collective certification, where the court conducts a more stringent analysis, to file a motion for de-certification and include additional declarations. *Id.* at 112; *see also Kim v. 511 E. 5th Street, LLC*, 985 F. Supp. 2d 439, 445–46 (S.D.N.Y. 2013).

In accordance with my decision above, Defendants shall file their opposition to Plaintiffs’ motion for conditional certification, including up to five declarations, on or before March 22, 2018. Plaintiffs shall file their reply on or before April 5, 2018. At that time, I will consider the motion for conditional certification fully briefed.

SO ORDERED.

Dated: March 12, 2018
New York, New York


Vernon S. Broderick
United States District Judge